IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6124 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARVODAYA EDUCATION TRUST

Versus

STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR RM DESAI for Respondent No. 1

MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 25/09/2000

ORAL JUDGEMENT :

Rule. Shri R.M. Desai, learned advocate appearing for respondent no.1 waives service of rule. Shri Dave for Shri A.D. Oza, learned advocate waives

service of rule on behalf of respondent no.2.

2. The present petition is filed by the petitioner trust against an order dated 12.5.1999, whereby the order dated 12.1.1999 passed by the respondent no.2, Secondary Education Board is confirmed. The case of the petitioner is that the authorities have misdirected themselves inasmuch as one of the three grounds on which the order dated 12.1.1999 and 12.5.1999 are based is that there is a possibility of unhealthy competition as there is an existing girls school in the area.

3. Ms.Mandavia, learned advocate for the petitioner has pointed out that a "No Objection Letter" dated 11.3.1998 was issued by Nagar Palika, Mangrol, and that the same was produced before the authorities, but the same is not taken into consideration. On the contrary, it is mentioned in the order dated 12.5.1999 which is produced at Annexure 'A' that, "In the report of the District Education Officer, it is specifically mentioned that there is an objection from the existing girls school and No Objection Certificate is not produced." Ms.Mandavia has pointed out that in ground (D) it is specifically averred that,

> ".. .. The respondent no.1 has held in its order that the girls high school has not given No Objection Certificate, but it is pertinent to note that very particular No Objection Certificate has been produced before it. .. .."

It is also averred that,

> ".. .. The girls school is run by the Municipality, Mangrol and the Chief Officer of the Mangrol Municipality has given No Objection Certificate for starting the girls school. (Annexure 'D' to this petition) .. .."

4. In view of the aforesaid discussion it is clear that the authorities have misdirected themselves on this particular point. Therefore, this petition deserves to be allowed. Orders dated 12.1.1999 and 12.5.1999 are hereby quashed and set aside.

5. The petitioner shall submit its papers to respondent no.2 for orders and respondent no.2 shall consider the same in accordance with law and decide the same. The petitioner shall also produce necessary documentary evidence to the effect that Mangrol

Municipality is running girls school and No Objection Certificate issued by Mangrol Municipality be produced before the concerned authority so as to consider the same. The to respondent no.2 may consider the case of the petitioner afresh on all other available grounds.

5. The petition is disposed of with the aforesaid directions. Rule is made absolute with no order as to costs.

25th September 2000 (Ravi R. Tripathi, J.)

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